United States Department of Agriculture
Office of Finance and Management
National Finance Center
P.O. Box 61500
New Orleans
Louisiana 70161-1500

Title: 5, United States Code

Chapter: 84, Federal Employees' Retirement System, Subchapter III, Thrift Savings Plan

Bulletin: 90-39, Implementation of Section 2 of Public Law 101-335, Correction of Employing Agency Errors Relating to the Thrift Savings Plan

Date: December 17, l990

To: TSP Payroll Office Representatives
TSP Personnel Office Representatives
TSP Automated Data Processing Representatives

TSP BULLETIN

The purpose of this bulletin is to provide agency representatives with general information concerning the implementation of Section 2 of the Thrift Savings Plan Technical Amendments Act of 1990, Public Law 101-335. Additional information, instructions, and procedures are being issued concurrently in other Thrift Savings Plan (TSP) bulletins.

I. Background

A On July 17, 1990, the Thrift Savings Plan Technical Amendments Act of 1990 (Public Law 101-335) was enacted. Section 2 of Public Law 101-335 provides the statutory authority for employing agencies to pay to the Thrift Savings Fund amounts representing lost earnings resulting from employing agency errors.

B. The provisions of Section 2 of Public Law 101-335 are retroactive to the inception of the Thrift Savings Plan. This means that employing agencies will be required to pay lost earnings on certain administrative errors that affect or have affected TSP accounts since the inception of the Plan.

II. Overview

A. **Types of Administrative Errors That Require Payment of Lost Earnings.**

1. Late Contributions

a. Agencies are required to pay lost earnings on an Employee Contribution that was withheld from an employee's paycheck when required but was not submitted on time to the Plan's recordkeeper, the National Finance Center (NFC), by the agency payroll office.

Expiration Date: When superseded.

b. Payment of lost earnings is prohibited by Section 8432a(a)(2) of Title 5, United States Code, when the administrative error involves the employing agency's failure to deduct Employee Contributions from an employee's paycheck. This means that agencies cannot pay lost earnings on "make-up" Employee Contributions (i.e., contributions that were not withheld from an employee's paycheck when required due to an agency administrative error but were deducted in subsequent pay periods in accordance with the Federal Retirement Thrift Investment Board's Error Correction Regulations (5 CFR 1605)). However, agencies will be required to pay lost earnings on the Agency Matching Contributions associated with those " make-up" Employee Contributions, even though lost earnings cannot be paid on the Employee Contributions that were not deducted when required.

c. Lost earnings are required to be paid on Agency Automatic (1%) Contributions that were not submitted on time to NFC.

d. Lost earnings are required to be paid on Agency Matching Contributions that were not submitted on time to NFC.

e. If the agency payroll office submits a payment record that is deleted by NFC (because an error prevents the record from processing), lost earnings are required to be paid on a resubmitted payment record that is not submitted to NFC within 30 days of the original pay date of the payment record.

f. If retroactive basic pay is paid to an employee because of an agency administrative error (e.g., a retroactive within-grade increase), and that pay is subject to TSP contributions, the employing agency will be required to pay lost earnings on those late TSP contributions (including the Employee Contributions).

2. **Fund Errors.** An employing agency will be required to pay lost earnings on contributions that, due to an agency administrative error, are invested incorrectly. Fund errors generally occur when an employee submits a TSP Election Form, Form TSP- 1, requesting to have contributions invested in a particular investment fund(s), and the agency erroneously reports the contributions in a different investment fund(s).

3. **Loan Allotments.** If an agency payroll office deducts an amount representing an employee's TSP loan allotment and fails to submit that amount to NFC on time, the employing agency will be required to pay lost earnings on that late loan allotment. Routine loan payments that are not deducted from an employee's paycheck, or are deducted in an incorrect amount, are covered under the rules of the TSP Loan Program and are not subject to lost earnings.

B. **Minimum Amount and Time (De Minimis) Rules.**

1. **Dollar Amount.** Lost earnings on late contributions and loan allotments will be calculated by the TSP System only for those contributions and loan allotments that are $1 or more (e.g., lost earnings on a late Employee Contribution of $.80 ($.30 G Fund, $.20 F Fund, and $.30 C Fund) would not be processed by the TSP System because the total amount of the Employee Contribution is less than $1.00.

2. **Length of Time.** Lost earnings otherwise payable for a delay in submission of contributions or loan allotments will not be required for any contribution or loan allotment that is received by NFC within 30 days of the pay date for that contribution or loan allotment. The 30-day rule does not apply to investment fund errors.

III. Participant Claims for Lost Earnings

Each employing agency must develop procedures for its employees to file claims for lost earnings. The Federal Retirement Thrift investment Board will be issuing regulations for employing agencies to follow in developing the claims procedures.

IV. Agency Responsibility

A. The employing agency whose error caused a late or erroneous investment of money in the Thrift Savings Fund is responsible for payment of any lost earnings resulting from that error.

B. The employing agency that submitted payment records or loan allotments that are subject to lost earnings is also responsible for submitting the appropriate lost earnings records relating to those submissions. The amount of lost earnings that is calculated will be charged to the submitting payroll office's Treasury account. Where another employing agency caused the late or erroneous submission by the submitting payroll office, the payroll office that was charged for the amount of lost earnings calculated should seek reimbursement from the other payroll office.

V. Implementation

Agency payroll offices may begin to submit Lost Earnings Records to NFC in January 1991. See TSP Bulletin 90-40, Processing Lost Earnings Records, dated December 17, 1990, for detailed procedures and instructions on processing Lost Earnings Records.

Clyde G. McShan, II

CLYDE G. McSHAN, II
Director